

AMENDED IN SENATE MARCH 27, 2006

SENATE BILL

No. 1728

Introduced by Senator Battin

February 24, 2006

An act to amend Section 399.12 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1728, as amended, Battin. Energy: renewable energy resources.

The existing Public Utilities Act requires the Public Utilities Commission to review and adopt a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program.

~~This bill would define the term "procure" for purposes of the renewables portfolio standard program and would make other nonsubstantive, technical changes to a definition applicable to the renewables portfolio standard program.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 399.12 of the Public Utilities Code is*
2 *amended to read:*

3 399.12. For purposes of this article, the following terms have
4 the following meanings:

5 (a) "Eligible renewable energy resource" means an electric
6 generating facility that is one of the following:

1 (1) The facility meets the definition of “in-state renewable
2 electricity generation facility” in Section 25741 of the Public
3 Resources Code.

4 (2) A geothermal generation facility originally commencing
5 operation prior to September 26, 1996, shall be eligible for
6 purposes of adjusting a retail seller’s baseline quantity of eligible
7 renewable energy resources except for output certified as
8 incremental geothermal production by the Energy Commission,
9 provided that the incremental output was not sold to an electrical
10 corporation under contract entered into prior to September 26,
11 1996. For each facility seeking certification, the Energy
12 Commission shall determine historical production trends and
13 establish criteria for measuring incremental geothermal
14 production that recognizes the declining output of existing
15 steamfields and the contribution of capital investments in the
16 facility or wellfield.

17 (3) The output of a small hydroelectric generation facility of
18 30 megawatts or less procured or owned by an electrical
19 corporation as of the date of enactment of this article shall be
20 eligible only for purposes of establishing the baseline of an
21 electrical corporation pursuant to paragraph (3) of subdivision (a)
22 of Section 399.15. A new hydroelectric facility is not an eligible
23 renewable energy resource if it will require a new or increased
24 appropriation or diversion of water under Part 2 (commencing
25 with Section 1200) of Division 2 of the Water Code.

26 (4) A facility engaged in the combustion of municipal solid
27 waste shall not be considered an eligible renewable *energy*
28 resource unless it is located in Stanislaus County and was
29 operational prior to September 26, 1996. Output from ~~such~~ *those*
30 facilities shall be eligible only for the purpose of adjusting a
31 retail seller’s baseline quantity of eligible renewable energy
32 resources.

33 (b) “Energy Commission” means the State Energy Resources
34 Conservation and Development Commission.

35 (c) “Retail seller” means an entity engaged in the retail sale of
36 electricity to end-use customers, including any of the following:

37 (1) An electrical corporation, as defined in Section 218.

38 (2) A community choice aggregator. The commission shall
39 institute a rulemaking to determine the manner in which a
40 community choice aggregator will participate in the renewables

1 portfolio standard subject to the same terms and conditions
2 applicable to an electrical corporation.

3 (3) An electric service provider, as defined in Section 218.3
4 subject to the following conditions:

5 (A) An electric service provider shall be considered a retail
6 seller under this article for sales to any customer acquiring
7 service after January 1, 2003.

8 (B) An electric service provider shall be considered a retail
9 seller under this article for sales to all its customers beginning on
10 the earlier of January 1, 2006, or the date on which a contract
11 between an electric service provider and a retail customer
12 expires. Nothing in this subdivision may require an electric
13 service provider to disclose the terms of the contract to the
14 commission.

15 (C) The commission shall institute a rulemaking to determine
16 the manner in which electric service providers will participate in
17 the renewables portfolio standard. The electric service provider
18 shall be subject to the same terms and conditions applicable to an
19 electrical corporation pursuant to this article. Nothing in this
20 paragraph shall impair a contract entered into between an electric
21 service provider and a retail customer prior to the suspension of
22 direct access by the commission pursuant to Section 80110 of the
23 Water Code.

24 (4) "Retail seller" does not include any of the following:

25 (A) A corporation or person employing cogeneration
26 technology or producing power consistent with subdivision (b) of
27 Section 218.

28 (B) The Department of Water Resources acting in its capacity
29 pursuant to Division 27 (commencing with Section 80000) of the
30 Water Code.

31 (C) A local publicly owned electrical utility as defined in
32 subdivision (d) of Section 9604.

33 (d) "Renewables portfolio standard" means the specified
34 percentage of electricity generated by eligible renewable energy
35 resources that a retail seller is required to procure pursuant to
36 Sections 399.13 and 399.15.

37 ~~SECTION 1. Section 399.12 of the Public Utilities Code is~~
38 ~~amended to read:~~

39 ~~399.12. For purposes of this article, the following terms have~~
40 ~~the following meanings:~~

1 ~~(a) “Eligible renewable energy resource” means an electric~~
2 ~~generating facility that is one of the following:~~

3 ~~(1) The facility meets the definition of “in-state renewable~~
4 ~~electricity generation facility” in Section 25741 of the Public~~
5 ~~Resources Code.~~

6 ~~(2) A geothermal generation facility originally commencing~~
7 ~~operation prior to September 26, 1996, shall be eligible for~~
8 ~~purposes of adjusting a retail seller’s baseline quantity of eligible~~
9 ~~renewable energy resources except for electricity certified as~~
10 ~~incremental geothermal production by the Energy Commission,~~
11 ~~provided that the incremental geothermal production of~~
12 ~~electricity was not sold to an electrical corporation under contract~~
13 ~~entered into prior to September 26, 1996. For each facility~~
14 ~~seeking certification, the Energy Commission shall determine~~
15 ~~historical production trends and establish criteria for measuring~~
16 ~~incremental geothermal production of electricity that recognizes~~
17 ~~the declining geothermal output of existing steamfields and the~~
18 ~~contribution of capital investments in the facility or wellfield.~~

19 ~~(3) The electricity generated by a small hydroelectric~~
20 ~~generation facility of 30 megawatts or less procured or owned by~~
21 ~~an electrical corporation as of the date of enactment of this article~~
22 ~~shall be eligible only for purposes of establishing the baseline of~~
23 ~~an electrical corporation pursuant to paragraph (3) of subdivision~~
24 ~~(a) of Section 399.15. A new hydroelectric facility is not an~~
25 ~~eligible renewable energy resource if it will require a new or~~
26 ~~increased appropriation or diversion of water under Part 2~~
27 ~~(commencing with Section 1200) of Division 2 of the Water~~
28 ~~Code.~~

29 ~~(4) A facility engaged in the combustion of municipal solid~~
30 ~~waste shall not be considered an eligible renewable energy~~
31 ~~resource unless it is located in Stanislaus County and was~~
32 ~~operational prior to September 26, 1996. Electricity generated by~~
33 ~~facilities meeting these requirements shall be eligible only for the~~
34 ~~purpose of adjusting a retail seller’s baseline quantity of eligible~~
35 ~~renewable energy resources.~~

36 ~~(b) “Energy Commission” means the State Energy Resources~~
37 ~~Conservation and Development Commission.~~

38 ~~(c) “Procure” means that a retail seller receives either~~
39 ~~delivered electricity, or the contractual right to receive future~~
40 ~~deliveries of electricity, generated by an eligible renewable~~

1 energy resource that it owns or for which it has entered into an
2 electricity purchase contract. Nothing in this article is intended to
3 imply that the purchase of electricity from third parties in a
4 wholesale transaction is the preferred method of fulfilling a retail
5 seller's obligation to comply with this article.

6 (d) "Retail seller" means an entity engaged in the retail sale of
7 electricity to end-use customers, including any of the following:

8 (1) An electrical corporation, as defined in Section 218.

9 (2) A community choice aggregator. The commission shall
10 institute a rulemaking to determine the manner in which a
11 community choice aggregator will participate in the renewables
12 portfolio standard subject to the same terms and conditions
13 applicable to an electrical corporation.

14 (3) An electric service provider, as defined in Section 218.3
15 subject to the following conditions:

16 (A) An electric service provider shall be considered a retail
17 seller under this article for sales to any customer acquiring
18 service after January 1, 2003.

19 (B) An electric service provider shall be considered a retail
20 seller under this article for sales to all its customers beginning on
21 the earlier of January 1, 2006, or the date on which a contract
22 between an electric service provider and a retail customer
23 expires. Nothing in this subdivision may require an electric
24 service provider to disclose the terms of the contract to the
25 commission.

26 (C) The commission shall institute a rulemaking to determine
27 the manner in which electric service providers will participate in
28 the renewables portfolio standard. The electric service provider
29 shall be subject to the same terms and conditions applicable to an
30 electrical corporation pursuant to this article. Nothing in this
31 paragraph shall impair a contract entered into between an electric
32 service provider and a retail customer prior to the suspension of
33 direct access by the commission pursuant to Section 80110 of the
34 Water Code.

35 (4) "Retail seller" does not include any of the following:

36 (A) A corporation or person employing cogeneration
37 technology or producing power consistent with subdivision (b) of
38 Section 218.

1 ~~(B) The Department of Water Resources acting in its capacity~~
2 ~~pursuant to Division 27 (commencing with Section 80000) of the~~
3 ~~Water Code.~~

4 ~~(C) A local publicly owned electrical utility as defined in~~
5 ~~subdivision (d) of Section 9604.~~

6 ~~(e) “Renewables portfolio standard” means the specified~~
7 ~~percentage of electricity generated by eligible renewable energy~~
8 ~~resources that a retail seller is required to procure pursuant to this~~
9 ~~article.~~